LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
FEB 20 1958
JOHN T. ..., Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 449.

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING
BY
SHELL OIL COMPANY

*WILLIAM F. KENNEY,
OLIVER L. STONE,
50 West 50th Street,
New York 20, New York.

R. H. WHILDEN,
Shell Building,
Houston, Texas.

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas.

Attorneys for Petitioner.

* *Attorney upon whom service is to be made.*

TABLE OF CONTENTS.

	PAGE
CERTIFICATE OF COUNSEL	5

TABLE OF CASES.

Cities Service Gas Company v. *State Corporation Commission of Kansas*, No. 85	1, 2, 3, 4
Interstate Natural Gas Co. v. *Federal Power Commission*, 331 U. S. 682	3
Michigan-Wisconsin Pipeline Co. v. *Calvert*, 347 U. S. 157	3
Phillips Petroleum Co. v. *Wisconsin et al.* (1954) 347 U. S. 672	3, 4

STATUTE.

Natural Gas Act, Section 1(b)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 449.

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING BY SHELL OIL COMPANY

The petition for certiorari was filed herein on September 11, 1957. At that time jurisdiction had been noted in *Cities Service Gas Company* v. *State Corporation Commission of Kansas,* No. 85. In the *per curiam* order issued in No. 85 on January 20, 1958 the judgment of the Supreme Court of Kansas was reversed. One week later, on January 27, 1958, certiorari was denied in this case.

The sequence and timing of events leads us to believe the Court felt the issue in this case was necessarily governed by *Cities Service.* That, however, is not the case.

The issue involved here has never been decided by this Court. It was not presented in *Cities Service* or any other case. The issue which this case presents is:

> Does a pre-gathering field sale of casinghead gas by the producer *to a processor who is not an interstate*

pipe line company constitute a sale of natural gas in interstate commerce merely because the processor later sells a portion of one of the by-products to an interstate pipe line company?

The question is not whether this pre-processing sale is within the production and gathering exemption of Section 1(b) of the Natural Gas Act. The issue is whether such a sale is "in interstate commerce" as provided in Section 1(b) of the Act. If not, the Act simply does not apply. The Commission's jurisdiction emanates solely from the Act, not from the impotence of State power over sales admittedly in interstate commerce. There is still no decision by this Court holding that a pre-processing sale of the type here involved is a sale in interstate commerce within the affirmative coverage of Section 1(b) of the Act. No such issue was presented in *Cities Service.*

In *Cities Service* some of the gas was purchased at the wellhead; the balance was purchased after gathering. ***All of the sales were made directly to an interstate pipe line company for immediate flow, without processing, into the interstate stream.*** To the extent that processing was involved, it took place prior to the purchase by Cities Service.[1] Such sales are clearly in interstate commerce and thus within the preempted price regulatory power of the Commission. But that is not this case. A state regulation fixing a minimum price for natural gas at the wellhead may constitute a burden upon interstate commerce or an interference with the jurisdiction of the Federal Power Commission even though the Act does not extend its applicability to sales prior to gathering and processing. Therefore, the question whether the Federal Power Commission has jurisdiction over sales prior to gathering and process-

[1] Jurisdictional Statement by Cities Service, p. 6.

ing, which sales we maintain are not "in interstate commerce", is entirely different from the issue involved in the *Cities Service* case.

The sale of casinghead gas involved in this case was consummated at the field separator before gathering; the purchaser was not an interstate pipe line company but was the owner and operator of a gasoline processing plant located in the field; at the time and place of sale the casinghead gas could not have been used as commercial fuel nor was it suitable for transportation in interstate pipe lines; the contract under which the casinghead gas was sold specified that the gas was conveyed "for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's plant"; the purchaser gathered the casinghead gas to its processing plant and there subjected it to a manufacturing process[2] which resulted in the manufacture of liquid hydrocarbons and residue gas; and some of the residue gas was used as fuel in the plant, some returned to the leases, and some sold by the processor to an interstate pipeline company.

Thus the question posed here was not before the Court in *Cities Service* nor in any other case. The issue is of the utmost importance and consequence. A very substantial part of all casinghead gas and "wet" gas being sold today is sold under contracts similar if not identical to that involved here. The issue in this case was framed with the view to obtaining a clear-cut answer by this Court to a question which has confounded the industry since *Phillips*

---

[2] This processing is not a mere increasing of pressure as was involved in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682. On the contrary, this processing is an intricate undertaking which actually changes the character, utility and value of the casinghead gas. See *Michigan-Wisconsin Pipeline Co.* v. *Calvert*, 347 U. S. 157, footnote 6, in which this Court recognized that processing of gas is analogous to the conversion in generators of mechanical energy into electrical energy.

Petroleum Co. v. *Wisconsin et al.* (1954) 347 U. S. 672. The order in *Cities Service* does not furnish the answer. Nor does the denial of certiorari.

This case presents an issue of sufficient importance to be judged on its own record, and too important to be cast into limbo, without benefit of audience, merely because it reached the seat of judgment simultaneously with one with a different past and a different issue who, though permitted to speak, was found wanting in the requisites for entrance.

It is respectfully urged that a rehearing be granted and that the petition for writ of certiorari be granted.

Respectfully submitted,

WILLIAM F. KENNEY,
OLIVER L. STONE,
50 West 50th Street,
New York 20, New York.

R. H. WHILDEN,
Shell Building,
Houston, Texas.

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas.
Attorneys for Petitioner.

By WILLIAM F. KENNEY
WILLIAM F. KENNEY

New York, N. Y., February 19, 1958.

Certificate of Counsel.

I certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and that said Petition is restricted to intervening circumstances of substantial or controlling effect.

I also certify that the foregoing Petition for Rehearing was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 19th day of February, 1958:

J. Lee Rankin, Solicitor General
Department of Justice
Washington 25, D. C.

Willard W. Gatchell, General Counsel
Robert L. Russell, Attorney
William L. Ellis, Attorney
Federal Power Commission
441 G Street, N. W.
Washington 25, D. C.

William F. Kenney

William F. Kenney
Attorney for Petitioner

New York, New York
February 19th, 1958.